



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 555

Docket No. NHTSA-2019-0019

Hemphill Brothers Leasing Company;

**Receipt of Petition for Temporary Exemption from
Shoulder Belt Requirement for Side-Facing Seats on Motorcoaches**

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of a petition for a temporary exemption; request for comment.

SUMMARY: Hemphill Brothers Leasing Company, LLC (Hemphill) has submitted a petition, dated April 5, 2018, for a temporary exemption from a shoulder belt requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, “Occupant crash protection,” for side-facing seats on motorcoaches. NHTSA is publishing this document in accordance with statutory and administrative provisions, and requests comments on the petition and this notice. NHTSA has made no judgment on the merits of Hemphill’s petition, except to note a few aspects of the petition that appear not to accord with the provisions of Part 555.

DATES: If you would like to comment on the petition, you should submit your comment not later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Deirdre Fujita, Office of the Chief Counsel, NCC-200, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC, 20590. Telephone: 202-366-2992; Fax: 202-366-3820.

ADDRESSES: You may submit your comment, identified by the docket number in the heading of this document, by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number.

Note that all comments received will be posted without change to

<http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, NHTSA will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. Telephone: 202-366-9826.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, the agency encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please see below.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under FOR FURTHER INFORMATION CONTACT. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Background

a. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a

temporary basis, under specified circumstances, and on terms the Secretary deems appropriate, motor vehicles from a motor vehicle safety standard or bumper standard. This authority and circumstances are set forth in 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

NHTSA established 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. Under Part 555 subpart A, a vehicle manufacturer seeking an exemption must submit a petition for exemption containing specified information. Among other things, the petition must set forth (a) the reasons why granting the exemption would be in the public interest and consistent with the objectives of the Safety Act, and (b) required information showing that the manufacturer satisfies one of four bases for an exemption.¹ Hemphill is applying on the basis that compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles (*see* 49 CFR 555.6(d)). A manufacturer is eligible for an exemption under this basis only if NHTSA determines the exemption is for not more than 2,500 vehicles to be sold in the U.S. in any 12-month period. An exemption under this basis may be granted for not more than 2 years but may be renewed upon reapplication.²

b. Receipt of petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Hemphill submitted an April 5, 2018 dated petition asking NHTSA for a temporary exemption from the shoulder belt requirement of FMVSS No. 208 for side-facing seats

¹ 49 CFR 555.5(b)(5) and 555.5(b)(7).

² 555.8(b) and 555.8(e).

on its motorcoaches. The basis for the application is that compliance would prevent Hemphill from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles (49 CFR 555.6(d)). To view the petition (and documents Hemphill later submitted amending it), go to <http://www.regulations.gov> and enter the docket number set forth in the heading of this document.³

Hemphill describes itself as a second-stage manufacturer⁴ organized under the laws of Tennessee. The petitioner states that it typically receives a bus shell⁵ from an “original manufacturer” and “customizes the Over-the-Road Bus (‘OTRB’) to meet the needs of entertainers, politicians, musicians, celebrities and other specialized customers who use motorcoaches as a necessity for their businesses.” Hemphill states that it “builds out the complete interior” of the bus shell, including—

roof escape hatch; fire suppression systems (interior living space, rear tires, electrical panels, bay storage compartments, and generator); ceiling, side walls and flooring; seating; electrical system, generator, inverter and house batteries; interior lighting; interior entertainment equipment; heating, ventilation and cooling system; galley with potable water, cooking equipment, refrigerators, and storage cabinets; bathroom and showers; and sleeping positions.

Hemphill states that it also operates the vehicles as a for-hire motor carrier of passengers, “leas[ing] the vehicle with driver to a customer on an exclusive basis for a designated period of time.” The petitioner states that “fewer than 100 entertainer-type

³ On December 26, 2018, NHTSA published a final rule that amended 49 CFR Part 555, effective January 25, 2019, to eliminate a provision that called for the agency to determine that a petition is complete before NHTSA publishes a notice summarizing the petition and soliciting public comments on it (83 FR 66158).

⁴ While “second-stage manufacturer” is not defined in NHTSA’s regulations, the agency believes Hemphill is referring to a “final-stage manufacturer,” which is defined in NHTSA’s certification regulation (49 CFR Part 567) as “a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed vehicle” (49 CFR 567.3).

⁵ The petition states (p. 2) that the bus shell “generally contains the following components: exterior frame; driver’s seat; dash cluster, speedometer, emissions light and emissions diagnosis connector; exterior lighting, headlights, marker lights, turn signals lights, and brake lights; exterior glass, windshield and side lights with emergency exits; windshield wiper system; braking system; tires, tire pressure monitoring system and suspension; and engine and transmission.”

motorcoaches with side-facing seats are manufactured and enter the U.S. market each year.” Hemphill seeks to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) as required by FMVSS No. 208. Hemphill states that, absent the requested exemption, it will otherwise be unable to sell a motorcoach whose overall level of safety or impact protection is at least equal to that of a nonexempted motorcoach

Pursuant to 49 CFR 555.6(d), an application must provide “[a] detailed analysis of how the vehicle provides the overall level of safety or impact protection at least equal to that of nonexempt vehicles.” Hemphill refers to NHTSA’s discussions in an earlier NHTSA rulemaking, summarized below, about the absence of the need for, and safety concerns about, the shoulder portion of Type 2 belts on side-facing seats in certain buses.

c. Seat Belt Rulemaking

On November 25, 2013, NHTSA published a final rule amending FMVSS No. 208 to require seat belts for each passenger seating position in all new over-the-road buses (regardless of gross vehicle weight rating (GVWR)), and all other buses with GVWRs greater than 11,793 kilograms (kg) (26,000 pounds (lb)) (with certain exclusions).⁶ The final rule became effective November 28, 2016 for buses manufactured in a single stage, and a year later for buses manufactured in more than one stage.

Hemphill is a final-stage manufacturer of buses covered by the seat belt rule. Thus, Hemphill’s over-the-road buses and buses with a GVWR greater than 11,793 kg (26,000 lb), manufactured on or after November 28, 2017, are required to have Type 2 seat belts (lap and shoulder seat belts) at all passenger seating positions.

⁶ 78 FR 70416 (November 25, 2013); response to petitions for reconsideration, 81 FR 19902 (April 6, 2016).

NHTSA commenced the seat belt rulemaking by publishing a notice of proposed rulemaking (NPRM) on August 18, 2010.⁷ For side-facing seating positions, the NPRM proposed to provide manufacturers the option of installing either a Type 1 (lap belt) or a Type 2 (lap and shoulder belt).⁸ This proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. The agency proposed to permit lap belts in side-facing seats because NHTSA was unaware of any demonstrable increase in associated risk of lap belts compared to lap/shoulder belts. The agency also stated⁹ that “a study commissioned by the European Commission regarding side-facing seats on minibuses and motorcoaches found that due to different seat belt designs, crash modes and a lack of real world data, it cannot be determined whether a lap belt or a lap/shoulder belt would be the most effective.”¹⁰

However, after the NPRM was published, the Motorcoach Enhanced Safety Act of 2012 was enacted as part of the Moving Ahead for Progress in the 21st Century Act (MAP-21), P.L. 112-141 (July 6, 2012). Section 32703(a) of MAP-21 directed the Secretary of Transportation (authority has been delegated to NHTSA) to “prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.”¹¹ MAP-21 stated in § 32702(12): “The term ‘safety belt’ has the meaning given the term in section 153(i)(4)(B) of title 23, United States Code.” This

⁷ 75 FR 50958.

⁸ 75 FR at 50971.

⁹ 75 FR at 50971-50972.

¹⁰ http://ec.europa.eu/enterprise/automotive/projects/safety_consider_long_stg.pdf [Footnote in text.]

¹¹ MAP-21 states at § 32702(6) that “the term ‘motorcoach’ has the meaning given the term ‘over-the-road bus’ in section 3038(a)(3) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note), but does not include a bus used in public transportation provided by, or on behalf of, a public transportation agency; or a school bus, including a multifunction school activity bus.” Section 3038(a)(3) (49 U.S.C. 5310 note) states: “The term ‘over-the-road bus’ means a bus characterized by an elevated passenger deck located over a baggage compartment.”

provision defines “safety belt” as “an occupant restraint system consisting of integrated lap shoulder belts.” Thus, in response to MAP-21, NHTSA’s final rule amended FMVSS No. 208 to require lap/shoulder belts at all designated seating positions, including side-facing seats, on over-the-road buses.¹²

At the same time, in the November 25, 2013 final rule preamble, NHTSA acknowledged that the agency had declined to require lap/shoulder belts on side-facing seats of light vehicles because NHTSA believed “the addition of a shoulder belt at [side-facing seats on light vehicles] is of limited value, given the paucity of data related to side-facing seats.”¹³ NHTSA also recognized there have been concerns in the past about a shoulder belt on side-facing seats, noting in the final rule that, although the agency has no direct evidence that shoulder belts may cause serious neck injuries when applied to side-facing seats, there are simulation data indicative of potential carotid artery injury when the neck is loaded by the shoulder belt.¹⁴ In addition, the agency noted that Australian Design Rule ADR 5/04, “Anchorages for Seatbelts” has specifically prohibited shoulder belts for side-facing seats since 1975. In the November 2013 final rule, NHTSA stated that given there would likely be few side-facing seats on over-the-road buses, and in view of the unknowns about shoulder belt loading of an occupant’s neck on a side-facing seat,

manufacturers of over-the-road buses seeking to install lap belts on side-facing seats may petition NHTSA for a temporary exemption from the requirement to install lap/shoulder belt at side-facing seats, under 49 CFR Part 555. The basis for the petition is that the applicant is unable to sell a bus whose overall level of safety is at least equal to that of a non-exempted vehicle. The agency would be receptive to the argument that,

¹² For side-facing seats on buses other than over-the-road buses, in the final rule NHTSA permitted either lap or lap/shoulder belts at the manufacturer’s option.

¹³ 78 FR at 70448, quoting from the agency’s Anton’s Law final rule which required lap/shoulder belts in forward-facing rear seating positions of light vehicles, 59 FR 70907.

¹⁴ Editors: Fildes, B., Digges, K., “Occupant Protection in Far Side Crashes,” Monash University Accident Research Center, Report No. 294, April 2010, pg. 57. [Footnote in text.]

for side-facing seats, lap belts provide an equivalent level of safety to lap/shoulder belts.

78 FR at 70448.

d. Summary of Petitioner's Arguments

After reiterating NHTSA's discussions in the seat belt rulemaking, the petitioner states that NHTSA has not conducted testing on the impact or injuries to passengers in side-facing seats in motorcoaches, so "there is no available credible data that supports requiring a Type 2 belt at the side-facing seating positions." Hemphill says that it believes if it complies with the final rule as published, it would be "forced to offer" customers—

a motorcoach with a safety feature that could make the occupants less safe, or certainly at least no more safe, than if the feature was not installed. The current requirement in FMVSS 208 for Type 2 belts at side-facing seating positions in OTRBs makes the applicants unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the level of safety of a non-exempted vehicle.

Pursuant to 49 CFR 555.5(b)(7), the petitioner must state why granting an exemption allowing it to install Type 1 instead of Type 2 seat belts in side-facing seats would be in the public interest and consistent with the objectives of the Safety Act.

In a May 11, 2018 email providing this information, Hemphill states that granting an exemption to allow manufacturers an option of installing a Type 1 lap belt at side-facing seating positions is consistent with the public interest because "NHTSA's analysis in developing this rule found that such belts presented no demonstrable increase in associated risk." The petitioner also states that the final rule requiring Type 2 belts at side-facing seats "was not the result of any change in NHTSA policy or analysis, but rather resulted from an overly broad mandate by Congress for 'safety belts to be installed

in motorcoaches at each designated seating position.” Hemphill states that, “based on the existing studies referenced herein and noted in the rulemaking, petitioners assert that Type 1 belts at side-facing seats may provide equivalent or even superior occupant protection than Type 2 belts.”

The petitioner believes that an option for Type 1 belts at side-facing seats is consistent with the objectives of 49 U.S.C. Chapter 301 (the Safety Act) because, Hemphill states, § 30111(a) of the Safety Act states that the Secretary shall establish motor vehicle safety standards that "shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms." The petitioner states that—

an option for Type 1 or Type 2 belts at side-facing seating positions is practicable as it allows the manufacturer to determine the best approach to motor vehicle safety depending on the intended use of the vehicle and its overall design. Additionally, the option to install either Type 1 or Type 2 belts at such locations meets the need for motor vehicle safety as it is consistent with current analysis by NHTSA and the European Commission that indicates no demonstrable difference in risk between the two types of belts when installed in sideways-facing seats. Finally, the option for Type 1 or Type 2 belts at side-facing seat locations provides an objective standard that is easy for manufacturers to understand and meet.

Hemphill indicates that if there is no future NHTSA research, testing or analysis to justify the use of Type 2 belts in side-facing seats in over-the-road buses, it expects it will seek to renew the exemption, if granted, at the end of the exemption period.

e. NHTSA’s Observations on Aspects of the Petition

There are aspects of Hemphill’s petition that appear inconsistent with the provisions of Part 555 Subpart A. The agency acknowledges them here for the benefit of the reader.

First, in its petition, Hemphill asks that if NHTSA grants the exemption, the agency should apply the exemption “retroactively to November 28, 2017.” Petitions for

temporary exemptions are prospective in application, not retroactive. Section 555.7(f) states: “Unless a later effective date is specified in the notice of the grant, a temporary exemption is effective upon publication of the notice in the FEDERAL REGISTER and exempts vehicles manufactured on and after the effective date.” Thus, if the petition is granted, it would apply to vehicles manufactured on and after the effective date of the exemption, which would be on publication of the notice or a later date.¹⁵

In its May 11, 2018 email, Hemphill argues that NHTSA has authority to establish a November 17, 2017¹⁶ effective date for the exemption under 49 U.S.C. 30111(d) of the Safety Act. Section 30111 authorizes NHTSA to prescribe FMVSSs, with subsection (d) generally prescribing the effective dates that NHTSA may specify for the FMVSSs.¹⁷ Section 30111 does not apply to the effective dates for temporary exemptions.

Second, Hemphill states in its petition that it covers 39 “other petitioners” listed in an attachment to the petition. Under Part 555 Subpart A, only one petitioner is covered by a petition. Section 30113(b)(2) of the Safety Act provides that the agency may begin a proceeding “when *a manufacturer*” applies for an exemption (emphasis added). Under the terms of 49 CFR 555.5, “*a manufacturer*” may apply for a temporary exemption. In contrast, 49 CFR Part 555 Subpart B, “Vehicles Built in Two or More Stages and Altered Vehicles,” allows an industry trade association representing a group of alterers or

¹⁵ For vehicles that have already been manufactured, a manufacturer may petition for an exemption from the Safety Act’s notice and remedy requirements when a noncompliance is inconsequential to motor vehicle safety. *See* 49 CFR Part 556, “Exemption for Inconsequential Defect or Noncompliance.”

¹⁶ The petitioner does not explain why it changed the requested date from November 28 to November 17. NHTSA assumes Hemphill meant November 28.

¹⁷ Regarding the motorcoach seat belt rulemaking, § 32703(e)(1) of MAP-21 prescribed the effective date for the rule. That section states that the regulation shall “apply to all motorcoaches manufactured more than 3 years after the date on which the regulation is published as a final rule.” NHTSA provided multi-stage manufacturers and alterers an additional year of lead time, in accordance with 49 CFR 571.8(b). *See*, 78 FR at 70463, col. 3.

manufacturers of motor vehicles built in two or more stages to file an economic hardship petition representing the interests of multiple manufacturers.¹⁸ When NHTSA proposed to adopt subpart B, NHTSA described subpart B's allowing manufacturers to bundle petitions as "relief not contained in the current version of part 555."¹⁹ Thus, it appears Hemphill's April 5, 2018 petition for temporary exemption could be considered as only from Hemphill, and not as a bundled petition covering the other parties listed in the attachment to the petition.

f. Comment Period

The agency seeks comment from the public on the merits of Hemphill's petition for a temporary exemption from FMVSS No. 208's shoulder belt requirement for side-facing seats. After considering public comments and other available information, NHTSA will publish a notice of final action on the petition in the **Federal Register**. Issued in Washington, D.C., under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten
Associate Administrator for Rulemaking

Billing Code: 4910-59-P

¹⁸ Subpart B applies to applications, based on substantial economic hardship, that seek a temporary exemption from a performance requirement for which an FMVSS specifies the use of a dynamic test procedure to determine compliance. Among other matters, the application must explain the substantial economic hardship to each of the manufacturers covered by the petition and provide a complete financial statement for each manufacturer and a complete description of each manufacturer's good faith efforts to comply with the standard. *See* 49 CFR 555.13.

¹⁹ Supplemental notice of proposed rulemaking, 69 FR 36038, 36045 (June 28, 2004). The "current version of part 555" is a reference to Part 555 Subpart A, which is the subpart under which Hemphill submits its petition for temporary exemption.

